

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF
ELECTRIFY AMERICA, LLC
SALES AND USE TAX

REFUSAL TO ISSUE
DECLARATORY ORDER

DOCKET NO. 2019-300-2-0665

Pursuant to a Petition for Declaratory Order (hereinafter referred to as “Petition”) filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by Electrify America, LLC (hereinafter referred to as “Electrify America” or “Petitioner”) on October 11, 2019, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24(17A), “Declaratory order-in general,” the Director issues the following ruling.

I. FACTS

Petitioner is an owner and operator of electric vehicle charging stations. Petitioner indicates that currently customers pay for charging time, plus a \$1.00 session fee. Customers may also be charged an “idling” fee for leaving the vehicle connected to the charger after the charge is complete (not including a ten-minute grace period). While Petitioner does not currently charge by kWh (Kilowatt/hour), it may in the future. Petitioner also indicates that it is not currently taking any resale exemptions on the purchase of electricity from the utility company.

II. QUESTION PRESENTED

Petitioner wants to know the tax applicability of both types of billing methods (by time and by kWh) under Iowa Code chapter 423.

III. STANDARD OF REVIEW

The purpose of a declaratory order is to provide a “generally available means for persons to obtain reliable information about agency administered law as it applies to their particular circumstances.” *Sierra Club Iowa Chapter v. Iowa Dep’t of Transp.*, 832 N.W.2d 636, 647 (2013) (citing Arthur Earl Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government*, 1-8 (1998)). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—7.41(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.41(17A) concerning the issuance of declaratory orders.

IV. RULING

For the reasons stated below, the Director refuses to issue a declaratory order in response to the Petition.

Pursuant to Iowa Administrative Code rule 701—7.24(1)“b”, a petition for declaratory order must contain, among other things, the following:

- (1) A clear and concise statement of all relevant facts on which the order is requested;
- (2) A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;
- (3) The questions the petitioner wants answered, stated clearly and concisely; [and]

- (4) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers

The Petition does not meet these requirements. The Petition does not identify the specific statutes or rules on which Petitioner's arguments are based and lacks a discussion of particular factual circumstances applied to such statutes or rules that give rise to the question Petitioner presents for review. Furthermore, the Petition fails to state answers to Petitioner's question and a summary of reasons in support of those answers. Absent this information, the Director is unable to adequately respond to the question raised in the Petition.

Pursuant to Iowa Administrative Code rule 701—7.24(9), the Director therefore refuses to issue a declaratory order for the following reasons: (1) The Petition does not substantially comply with Iowa Administrative Code rule 701—7.24, and (2) the facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order. Pursuant to Iowa Administrative Code rule 701—7.24(9)"c", Petitioner may submit a new Petition that complies with the rules as discussed above.

Done at Des Moines, Iowa on this 6th day of January, 2020.

IOWA DEPARTMENT OF REVENUE


BY 

Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 6th day of January, 2020, I caused a true and correct copy of the Refusal to Issue Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person:

Jason Mendelson
Electrify America, LLC
2200 Ferdinand Porsche Drive
Herndon, VA 20171


Hollie Welch, Executive Secretary
Iowa Department of Revenue